

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

LOUISIANA INDEPENDENT
PHARMACIES ASSOCIATION,

Plaintiff,

vs.

EXPRESS SCRIPTS, INC.,

Defendant.

Case No. 2:20-cv-647

Judge James D. Cain, Jr.

Magistrate Judge Kathleen Kay

***EX PARTE* CONSENT MOTION
FOR CERTIFICATION PURSUANT TO 28 U.S.C. § 1292(b)
AND FOR A STAY OF PROCEEDINGS**

Pursuant to Federal Rule of Civil Procedure 7(b) and to 28 U.S.C. § 1292(b), Defendant Express Scripts, Inc. respectfully moves for an order (1) certifying the Court's March 4, 2021 order denying ESI's motion to dismiss for an interlocutory appeal and (2) staying further proceedings before this Court pending the resolution of a subsequent petition for permission to appeal to the Fifth Circuit and all appellate proceedings that may follow if that court grants permission. The question warranting certification is whether the Medicare statute's express preemption clause for Part D plans, 42 U.S.C. § 1395w-112(g), preempts La. R.S. §§ 22:1860.1 and 46:2625(A)(2), as applied to prescription drug claims covered by Medicare. Plaintiff Louisiana Independent Pharmacies Association (LIPA) consents to certification and a stay.

As more fully explained in the attached memorandum filed herewith, the conditions for certification under Section 1292(b) are readily satisfied: The order denying ESI's motion to dismiss involves a controlling question of law as to which

there is substantial ground for difference of opinion, and an immediate appeal may materially advance the ultimate termination of the litigation. Wherefore, the relief requested should be granted.

Dated: May 3, 2021

Respectfully submitted,

/s/ Joshua S. Force

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